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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Brandon Wade Photography, LLC,

Case No:

Plaintiff,

COMPLAINT

V

VentureBeat, Inc..

DEMAND FOR JURY TRIAL

Defendant.

VentureBeat, Inc.,
Defendant.

Plaintiff Brandon Wade Photography, LLC (“*Plaintiff*”), by and through its undersigned counsel, for its Complaint against defendant VentureBeat, Inc. (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C. §501.

2. Brandon Wade (“*Wade*”) created a photograph of a red Kodiak truck (the “*Photograph*”) in which Plaintiff owns the rights and licenses for various uses including online and print publications.

3. Defendant is a technology media company which owns and operates a website at domain www.venturebeat.com (the “*Website*”).

4. Defendant, without permission or authorization from Plaintiff, actively copied and displayed the Photograph on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

PARTIES

5. Brandon Wade Photography, LLC is a Texas limited liability company and maintains its principal place of business in Tarrant County, Texas.

6. Upon information and belief, Defendant VentureBeat, Inc. is a Delaware corporation with a principal place of business at 500 Sansome Street, Suite 601, San Francisco in San Francisco County, California and is liable and responsible to Plaintiff based on the facts herein alleged.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over Defendant because it maintains its principal place of business in California.

9. Venue is proper under 28 U.S.C. §1331(b)(2) because Defendant does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

A. Plaintiff's Copyright Ownership

10. Plaintiff is a professional photography company by trade that is the legal and rightful owner of certain photographs which Plaintiff commercially licenses.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

1 12. Plaintiff has obtained active and valid copyright registrations from the
2 United States Copyright Office (the “USCO”) which cover many of Plaintiff’s
3 photographs while many others are the subject of pending copyright applications.

4 13. Plaintiff’s photographs are original, creative works in which Plaintiff
5 owns protectable copyright interests.

6 14. On January 8, 2021, Wade first published the Photograph. A copy of
7 the Photograph is attached hereto as Exhibit 1.

8 15. In creating the Photograph, Wade personally selected the subject
9 matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used
10 to capture the image.

11 16. On April 6, 2021, the Photograph was registered by the USCO under
12 Registration No. VA 2-246-681.

13 17. Wade created the Photograph with the intention of it being used
14 commercially and for the purpose of display and/or public distribution.

15 18. Wade published the Photograph by commercially licensing it to the
16 Dallas Morning News for the purpose of display and/or public distribution.

17 19. On November 29, 2022, Plaintiff acquired the rights in and to the
18 Photograph from Wade by way of written assignment.

19 **B. Defendant’s Infringing Activity**

20 20. Defendant is the registered owner of the Website and is responsible for
21 its content.

22 21. Defendant is the operator of the Website and is responsible for its
23 content.

24 22. The Website is a key component of Defendant’s popular and lucrative
25 commercial enterprise.

26 23. The Website is monetized in that it contains paid advertisements and
27 promotes the business to the public and, upon information and belief, Defendant

1 profits from these activities.

2 24. On or about November 10, 2021, Defendant displayed the Photograph
3 on the Website as part of an on-line story at URL:
4 [https://venturebeat.com/uncategorized/kodiak-robotics-to-expand-autonomous-](https://venturebeat.com/uncategorized/kodiak-robotics-to-expand-autonomous-trucking-with-125m/)
5 [truckng-with-125m/](https://venturebeat.com/uncategorized/kodiak-robotics-to-expand-autonomous-trucking-with-125m/). A copy of a screengrab of the Website including the
6 Photograph is attached hereto as Exhibit 2.

7 25. The Photograph was stored at URL: <https://venturebeat.com/wp-content/uploads/2021/11/B2EZVYMTBHWBITYJZWEAB7WR4.jpeg?w=1200&strip=all>.

8 26. Without permission or authorization from Plaintiff, Defendant
9 volitionally copied and displayed Plaintiff's copyright protected Photograph on the
10 Website.

11 27. Plaintiff first observed and actually discovered the Infringement on
12 August 25, 2022.

13 28. Upon information and belief, the Photograph was copied and displayed
14 by Defendant without license or permission, thereby infringing on Plaintiff's
15 copyrights in and to the Photograph (hereinafter the unauthorized use set forth above
16 is referred to as the "*Infringement*").

17 29. The Infringement includes a URL ("Uniform Resource Locator") for a
18 fixed tangible medium of expression that was sufficiently permanent or stable to
19 permit it to be communicated for a period of more than a transitory duration and
20 therefore constitutes a specific infringement.

21 30. The Infringement is an exact copy of Plaintiff's original image that was
22 directly copied and displayed by Defendant on the Website.

23 31. Upon information and belief, Defendant takes an active and pervasive
24 role in the content posted on its Website, including, but not limited to copying,
25 posting, selecting, commenting on, and/or displaying images including but not
26

1 limited to Plaintiff's Photograph.

2 32. Upon information and belief, the Photograph was willfully and
3 volitionally posted to the Website by Defendant.

4 33. Upon information and belief, Defendant was aware of facts or
5 circumstances from which the determination regarding the Infringement was
6 apparent. Defendant cannot claim that it was not aware of the infringing activities,
7 including the specific Infringement which forms the basis of this complaint, since
8 such a claim would amount to only willful blindness to the Infringement on the part
9 of Defendant.

10 34. Upon information and belief, Defendant engaged in the Infringement
11 knowingly and in violation of applicable United States copyright laws.

12 35. Upon information and belief, Defendant has the legal right and ability
13 to control and limit the infringing activities on its Website and exercised and/or had
14 the right and ability to exercise such right.

15 36. Upon information and belief, Defendant monitors the content on its
16 Website.

17 37. Upon information and belief, Defendant has received a financial benefit
18 directly attributable to the Infringement.

19 38. Upon information and belief, the Infringement increased traffic to the
20 Website and, in turn, caused Defendant to realize an increase in its business
21 revenues.

22 39. Upon information and belief, a large number of people have viewed the
23 unlawful copy of the Photograph on the Website.

24 40. Upon information and belief, Defendant at all times had the ability to
25 stop the reproduction and display of Plaintiff's copyrighted material.

26 41. Defendant's use of the Photograph, if widespread, would harm
27 Plaintiff's potential market for the Photograph.

42. On January 21, 2022, Plaintiff sent an invoice to Defendant regarding prior emails discussing use of the Photograph.

43. Despite Plaintiff's efforts and willingness to license the Photograph to Defendant, Defendant denied Plaintiff's services and did not license the Photograph.

44. Defendant, however, displayed the Photograph on the Website anyway.

45. On March 8, 2023, Plaintiff, via counsel, served a letter seeking to address the complaints contained herein concerning Defendant's infringement of Plaintiff's rights-protected work.

46. Despite Plaintiff's efforts and willingness to address Defendant's infringing activity, Defendant failed to respond, and Plaintiff was forced to seek judicial intervention for Defendant's infringing activity.

47. Further, despite Plaintiff's notifications to Defendant concerning its infringing activity, Defendant continues to infringe on Plaintiff's work thereby establishing the willful nature of its conduct.

48. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

FIRST COUNT

(*Direct Copyright Infringement, 17 U.S.C. §501 et seq.*)

49. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

50. The Photograph is an original, creative work in which Plaintiff owns a valid copyright.

51. The Photograph is properly registered with the USCO and Plaintiff has complied with all statutory formalities under the Copyright Act and under regulations published by the USCO.

52. Plaintiff has not granted Defendant a license or the right to use the Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in

the copyright to Defendant.

53. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

54. Defendant's reproduction of the Photograph and display of the Photograph constitutes willful copyright infringement.

55. Upon information and belief, Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that Defendant used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, Plaintiff's original and unique Photograph without Plaintiff's consent or authority, by using it on the Website.

56. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for each infringement pursuant to 17 U.S.C. § 504(c).

57. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

58. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

JURY DEMAND

59. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 *et seq.* and therefore award damages and monetary relief as follows:

- a. finding that Defendant infringed Plaintiff's copyright interest in and to the Photograph by copying and displaying it without a license or consent;
 - b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504(b) in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
 - c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
 - d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
 - e. for pre-judgment interest as permitted by law; and
 - f. for any other relief the Court deems just and proper.

DATED: March 19, 2024

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